

Appl. No. 10/054,825
Reply Date: October 12, 2006
Reply to Office Action of July 12, 2006

• • R E M A R K S / A R G U M E N T S • •

The Office Action of July 12, 2006 has been thoroughly studied. Accordingly, the following remarks are believed to be sufficient to place the application into condition for allowance.

Claims 1-11 are pending in this application.

Claims 1-8 and 11 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,699,228 to Chmielewski et al.

Claims 9 and 10 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Chmielewski et al. in view of Japanese reference no. 1996-196565 to Onishi et al.

For the reasons set forth below, it is submitted that all of the pending claims are patentable over the prior art of record and therefore, each of the outstanding prior art rejections of the claims should properly be withdrawn.

Favorable reconsideration by the Examiner is earnestly solicited.

The Examiner has relied upon Chmielewski et al. as disclosing:

...all aspects of the claimed invention with the exception of the opposite side edges of the supplementary absorbent batt assembly being spaced apart upwardly from the body facing surface of the primary absorbent batt assembly by a height of the barrier cuffs.

The Examiner has further relied upon Chmielewski et al. as disclosing:

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The Examiner further notes that Chmielewski et al.:

...discloses in column 10, lines 3-6, the rear edge 728 of the supplementary absorbent batt assembly 70 may be attached to portions of the primary absorbent batt assembly adjacent the topsheet.

In recognizing the structural differences between Chmielewski et al. and applicants' claimed invention, the Examiner takes the position that:

It would have been obvious to one of ordinary skill in the art at the time of invention to space the opposite side edges of the supplementary absorbent batt assembly being spaced upwardly from the body facing surface of the primary absorbent batt assembly, since the applicant has not shown that this configuration serves any stated purpose or solves any stated problem, and Chmielewski has disclosed the intention to attach the supplementary absorbent batt assembly at positions other than the topsheet of the primary assembly. It appears the invention would perform equally well with the opposite side edges of the supplementary absorbent batt assembly being spaced slightly apart from or attached to the body facing surface of the primary absorbent batt assembly, since either configuration allows for the formation of a pocket opening between the supplementary and primary absorbent batt assemblies, the allowing the invention to perform equally well either way.

It seems that the Examiner's reference to Chmielewski et al. at column 10, lines 3-6 is where the Examiner believes that Chmielewski et al. teaches alternative methods of attaching the supplementary absorbent batt assembly.

At column 10, lines 3-6 Chmielewski et al. teaches:

At its rear edges 728, the upper absorbent structure 70 is attached only at the corners 730 to topsheet 30, or other subjacent components of the absorbent garment.

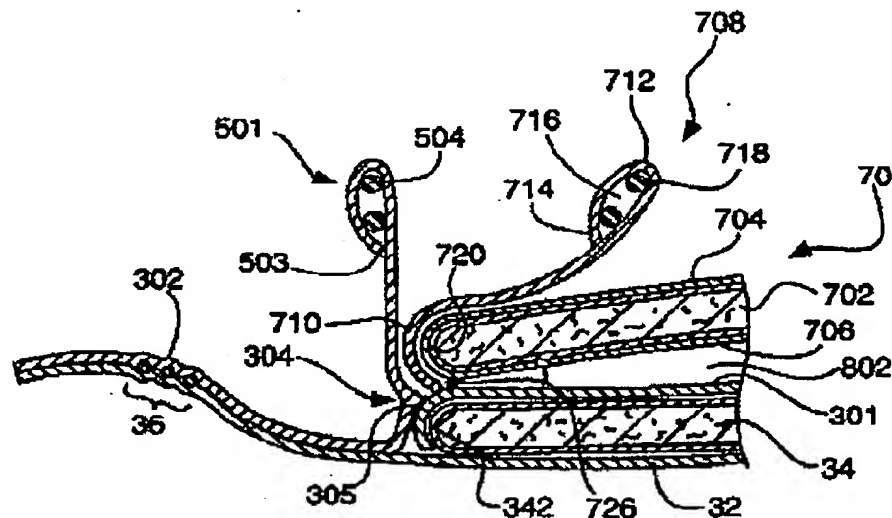
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It is improper under 35 U.S.C. §103 for the Examiner to base a rejection on what Chmielewski et al. "allows for" or does not exclude, as opposed to what Chmielewski et al. actually teaches - as a prior art reference.

Further, it is improper for the Examiner to take the position that structural differences between a claimed invention and the teachings of a prior art reference are inconsequential (or "obvious" under 35 U.S.C. §103) when the different structures effect a similar function. The Examiner is requested to cite a legal authority that supports her position.

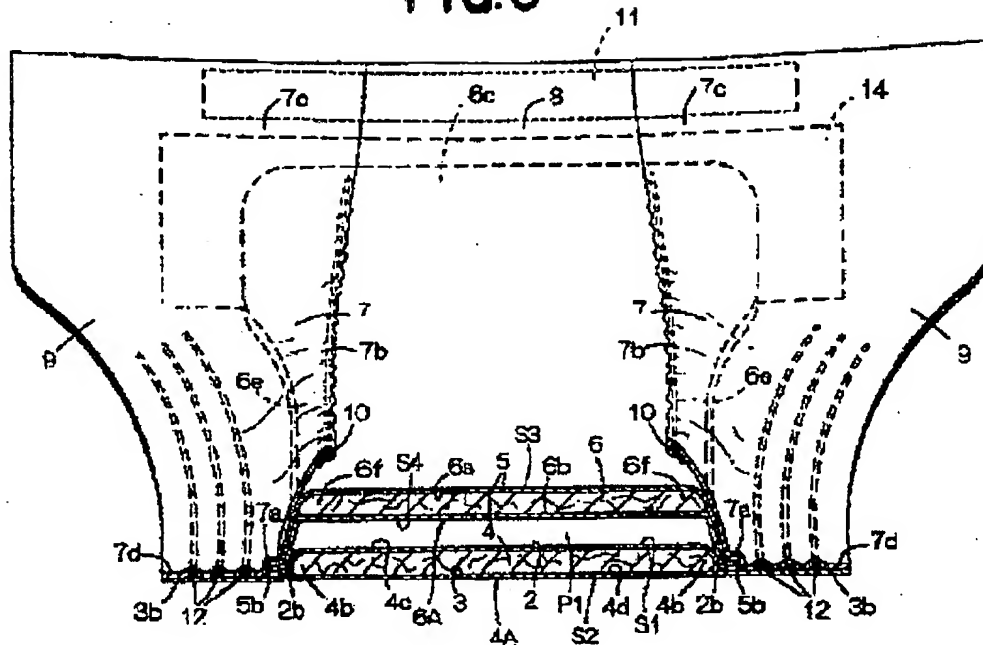
Figure 2 of Chmielewski et al. is reproduced as follows:

FIG. 2



Applicants' Fig. 3 is reproduced as follows:

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FIG. 3

As far as functional differences between Chmielewski et al. and the present invention, it is pointed out that, because Chmielewski et al. attaches the upper absorbent structure 70 to the lower core 34 along lines of attachment 726 as shown in Fig. 2 above, the vertical dimension by which the containment pocket 802 is formed is limited to the flexibility of the absorbent structures and the fact that the side edges of the absorbent structures are attached and cannot be separated or spaced apart from one another.

In contrast, according to the present invention, as can be seen from Fig. 3 above, since the side edges of the absorbent batt assemblies are not directly attached to one another, but rather are

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attached at different height positions along the barrier cuffs, the flexibility of the absorbent strictures has no impact on the vertical dimension of the pocket.

As opposed to Chmielewski et al., the pocket in applicants' invention is formed as the elastics in the distal edges of the barrier cuffs lift the upper absorbent batt assembly.

Chmielewski et al. expressly teaches that:

The contraction of the inner pair of waste containment flaps tends to encourage the rear edge of the upper absorbent structure to rise above the lower topsheet, forming an arched-shaped pocket opening.

Such an "arched-shaped pocket" necessarily involves a great amount of force that is applied to the absorbent batt assemblies and resistance which cause the deflection and subsequent arching.

Applicants' invention, which is structurally different from Chmielewski et al. only requires that the upper absorbent batt assembly be lifted (at the edges) above the lower absorbent batt assembly.

It is thus submitted that applicants' invention is structurally distinguishable over what Chmielewski et al. actually teaches and that the structural differences equate into significant functional differences.

Accordingly, Chmielewski et al. does not teach or suggest applicants' claimed invention.

Further it is noted that applicants' independent claim 1 requires that the distal end portion of the supplementary absorbent batt be "supported along transversely opposite side edges of said supplementary absorbent batt assembly in a vicinity of said distal edge portion by portions of said distal edge portion of said barrier cuffs."

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This structure, which is not found in Chmielewski et al. allows the supplementary absorbent batt to be lifted up and spaced apart from the primary batt assembly under the elastically contractible force of the barrier cuffs and be held in such a spaced-part position by the elastically contractible force, when the diaper is worn by a person.

In contrast, in Chmielewski et al. the upper absorbent structure 70 is not supported by the inboard leg gathers 704 or by the inboard leg gathers 501. Accordingly the upper absorbent structure 70 cannot be spaced apart upwardly from the lower absorbent core 34 by the elastically contractible force of the inboard gathers 708 or 501.

Thus, Chmielewski et al. fails to teach the structure and related or associated function of applicants' claimed invention.

The Examiner as relied upon Onishi et al. as teaching a second supplementary absorbent batt assembly located in the rear waist region and smaller than the supplementary absorbent batt assembly.

In combining the teachings of Chmielewski et al. and Onishi et al. the Examiner takes the position that:

It would have been obvious to one of ordinary skill in the art at the time of invention to construct the diaper of Chmielewski with a secondary supplementary absorbent batt assembly, as taught by Onishi, to trap waste and minimize contact of the wearer of the diaper.

The Examiner's further reliance upon Onishi et al. does not address or overcome the differences between Chmielewski et al. and applicants' claimed invention.

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Based upon the above distinctions between the prior art, properly considered as a whole and the present invention, and the overall teachings of the prior art, properly considered as a whole, it is respectfully submitted that the Examiner cannot rely upon the prior art as required under 35 U.S.C. §103 to establish a *prima facie* case of obviousness of applicants' claimed invention.

It is, therefore, submitted that any reliance upon the prior art as would be improper inasmuch as the prior art does not remotely anticipate, teach, suggest or render obvious the present invention.

It is submitted that the claims, as now amended, and the discussion contained herein clearly show that the claimed invention is not novel and neither anticipated nor obvious over the teachings of the prior art and the outstanding rejection of the claims should hence be withdrawn.

Therefore, reconsideration and withdrawal of the outstanding rejection of the claims and an early allowance of the claims is believed to be in order.

It is believed that the above represents a complete response to the outstanding Official Action and reconsideration is requested.


If upon consideration of the above, the Examiner should feel that there remain outstanding issues in the present application that could be resolved; the Examiner is invited to contact applicants' patent counsel at the telephone number given below to discuss such issues.

To the extent necessary, a petition for an extension of time under 37 CFR §1.136 is hereby made. Please charge the fees due in connection with the filing of this paper, including extension of

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time fees, to Deposit Account No. 12-2136 and please credit any excess fees to such deposit
account.

Respectfully submitted,



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